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BAKER BOTTS L.L.P.

PATENT DEPARTMENT

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANTONIUS EMMERINK, EGON KLEIN,  
ANDREAS STEFFAN, JOSEF WAHLER,  
RAINER WINDECKER, and STEFFI WINKLER

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Appeal 2009-0857  
Application 10/088,683  
Technology Center 2400

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Decided:<sup>1</sup> April 28, 2009

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Before KENNETH W. HAIRSTON, JOHN A. JEFFERY, and  
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from the Examiner's final rejection of claims 1-17. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

*A. Appellants' invention*

Appellants' invention relates to a method for setting up and/or clearing a communications link via decentralized communication devices of at least a first and a second type. A central device signals the decentralized devices to control the setting up and/or clearing of the communication link (App. Br. 6).

*B. The claims*

Independent claim 1 is illustrative. It reads as follows:

1. A method for setting up and/or clearing a communications link via communication devices of at least a first and a second type, comprising:  
signaling the at least first and second type of communication devices to control the setting up and/or clearing of the communications link; and  
setting up and/or clearing the connection for the first type via at least one decentralized switching device, wherein  
the signaling takes place from a central device.

*C. The references and rejections*

The Examiner relies on the following prior art reference to show unpatentability:

Jan. 3, 2006  
(filed Dec. 22, 1998)

Claims 1-17 stand rejected under 35 U.S.C. § 102(e) as anticipated by Gardner.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs and the Answer for their respective details.<sup>2</sup> In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## ISSUES

The Examiner asserts:

1. The communication devices of a first type and a second type, as recited in claim 1, read on Gardner's switching systems 206 and 208 (*see, e.g.,* fig. 2); and
2. The central device that performs the control signaling reads on Gardner's signaling processor 224 (Ans. 3-4).

Appellants assert:

1. The claimed “communication devices of at least a first and a second type” do not read on Gardner’s switching systems 206 and 208 because a “switching system” is not a “communication device” (App. Br. 9-10; Reply Br. 2);

<sup>2</sup> We refer to (1) the Appeal Brief filed Nov. 2, 2007; (2) the Examiner's Answer mailed Dec. 7, 2007; and (3) the Reply Brief filed Feb. 7, 2008, throughout this opinion.

2. Gardner fails to disclose that the signaling takes place *from* a central device, as recited in independent claim 1, because signaling does not originate from Gardner's signal processor. Rather, Gardner's signal processor merely receives and processes call signaling (App. Br. 10; Reply Br. 2-3); and

3. Gardner fails to disclose *signaling* first and second types of communication devices to control the setting up and/or clearing of the communications link, as recited in independent claim 1 (App. Br. 11; Reply Br. 2-3).

The issues before us, then, are:

- I. Whether Appellants have shown that the Examiner erred in interpreting Gardner's switching systems as constituting "communication devices";
- II. Whether Gardner discloses that control signaling takes place *from* a central device; and
- III. Whether Gardner discloses *signaling* first and second types of communication devices.

#### FINDINGS OF FACT

The record supports the following Findings of Fact (FF) by a preponderance of the evidence:

1. Appellants' Specification does not provide any definitions for what constitutes a "device" or a "communication device."
2. Appellants have provided no evidence of what the skilled artisan would understand the terms "device" and "system" to mean.

3. Appellants disclose a “central *device*” ZE1 and “peripheral *devices*” P1, P2, DZ1, DZ2, P10, P20, and DZ10; each of these “devices” being comprised of multiple components or modules (Spec. 12-13 and 16-19; figs. 1-3).
4. “Central *device*” ZE1 comprises a signaling device DCL, a call processing module CP, equipment-specific interface functions module DH, and switching matrix MTS (Spec. 12-13; fig. 1).
5. The call processing module CP and the equipment-specific interface functions module DH may, in turn, be individual modules, as opposed to being integrated (Spec. 13).
6. “Peripheral *device*” DZ10 comprises at least subscriber line module SLM010, a decentralized switching device CS10, and connection section 300 (Spec. 16-19; fig. 3).
7. Gardner provides specific examples of how the switching systems 206, 208 may be embodied (Gardner, col. 5, ll. 59-66).
8. Two examples of Gardner’s switching systems 206, 208 are (1) customer premises equipment (CPE); and (2) “any other device capable of handling a call” (Gardner, col. 5, ll. 63, 65-66).
9. Gardner states that a “CPE can be, for example, a computer, a private branch exchange, or other communication device” (Gardner, col. 5, l. 66 – col. 6, l. 1).
10. Gardner defines the term “control message” to mean “a control or signaling message, a control or signaling instruction, or a control or signaling signal . . . that conveys information from one point to another” (Gardner, col. 5, ll. 20-24).

11. Gardner states, “[t]he signaling processor 224 is a signaling platform that can receive, process, and *generate* call signaling” (Gardner, col. 6, ll. 8-9 (emphasis added)).
12. Gardner also discloses, “[t]he [asynchronous transfer mode (ATM)] matrix 226 is a controllable ATM matrix that establishes connections in response to control messages received from the signaling processor 224 (Gardner, col. 6, ll. 21-23).
13. Gardner expressly disclose that signaling processor 224 sends a control signal across link 228 to ATM matrix 226 identifying selected connections (Gardner, col. 5, ll. 3-24; col. 6, ll. 40-45; fig. 2).
14. Gardner’s Figure 2 embodiment further depicts additional control links 230, 232 extending from signaling processor 224, but does not specifically indicate to where these control links are routed (Gardner, fig. 2).
15. Gardner indicates that switching system 206 of the Figure 2 embodiment has at least four user communication connections (connections 210, 214, 216, and 218) and the switching system 208 has at least four user communication connections (connections 212, 214, 220, and 222) (Gardner, col. 4, l. 47 – col. 5, l. 2; col. 5, ll. 33-41; fig. 2).
16. In one example of the Figure 2 embodiment, Gardner discloses that additional control message links, beyond those depicted in Figure 2, are interconnected between signaling processor 224 and switching systems 206, 208, respectively (Gardner, col. 6, l. 53 – col. 7, l. 9).
17. The signaling processor 224 transmits new call signaling to the second switching system 208 over one of these undepicted links, identifying the

connection 212 over which the user communication will be transported (Gardner, col. 7, ll. 5-9).

18. Gardner also states that “calls may be connected in the opposite direction as that described above [in relation to the embodiments depicted in Figures 2 and 3]. In addition, one, multiple, or all of the elements of the [described call connection systems] may be used to connect calls” (Gardner, col. 9, ll. 24-27).

### PRINCIPLES OF LAW

1. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).
2. Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

### ANALYSIS

#### I.

Appellants assert that the claimed communication devices of the first and second type do not read on Gardner’s switching systems 206 and 208 because a “switching system” as used in Gardner is not a “communication device” (App. Br. 9-10; Reply Br. 2). To support this position, Appellants advance various arguments in their Briefs. Appellants argue that their recitation in claim 1 of both “communication devices” and a “switching



device” evidences that the phrase “communication devices” is not broad enough to encompass a “switching device” (App. Br. 9-10). Appellants also argue that “[i]t is well understood by the skilled artisan that a system in telecommunications consists of several devices that interact amongst each other. However, the term ‘system’ would not be construed as a single device, and therefore the term ‘switching *system*’ is not a subset of ‘communications *device*’” (Reply Br. 2).

These arguments are not persuasive. Appellants’ Specification does not provide any definitions for what constitutes a “device” or a “communication device” (FF 1) much less any definitions that would distinguish the claimed devices from Gardner’s switching systems. Appellants have provided no evidence of what the skilled artisan would understand the terms “device” and “system” to mean (FF 2). It is Appellants’ burden to precisely define the invention, not the USPTO’s. *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). Appellants always have the opportunity to amend the claims during prosecution, and broad interpretation by the Examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

Moreover, Appellants’ own Specification itself uses the term “device” to mean a compilation of several components that interact amongst each other. This is the same definition Appellants argue should be afforded to the term “system.” More specifically, Appellants disclose a “central *device*” ZE1 and “peripheral *devices*” P1, P2, DZ1, DZ2, P10, P20, and DZ10; each of these “devices” being comprised of multiple components or modules (FF

3). For example, “central *device*” ZE1 comprises a signaling device DCL, a call processing module CP, equipment-specific interface functions module DH, and switching matrix MTS (FF 4). The call processing module CP and the equipment-specific interface functions module DH may, in turn, be individual modules as opposed to being integrated (FF 5). “Peripheral *device*” DZ10 comprises at least subscriber line module SLM010, a decentralized switching device CS10, and connection section 300 (FF 6).

Appellants also assert that “[t]he patentee is entitled to be its own lexicographer, and if the patentee claims both a communication device and a switching device as two distinctly different claim elements, [Appellants contend] that the presumption is that these are different types of devices” (App. Br. 10). This argument is not persuasive.

We note initially that the present dispute does not relate to whether Appellants may be their own lexicographers. Rather, the dispute relates to what the broadest reasonable interpretations are for the terms that Appellants have chosen to use in the claims. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). We further note that it is less than fully clear what Appellants even mean by “different *types* of devices,” but we infer that Appellants are arguing that the two distinctly different claim elements may not overlap in scope. If this is, in fact, Appellants’ position, it is untenable. Appellants’ own Specification indicates that the claim element “decentralized switching device” is a subset of the distinctly different claim element “communication device” (*see e.g.*, Spec. 16-19; fig. 3).

Appellants argue that Garner itself agrees with the interpretations that Appellants assert (Reply Br. 2). This argument is not persuasive. Gardner

expressly provides specific examples of how the switching systems 206 and 208 may be embodied (FF 7). Two of the recited examples are customer premises equipment (CPE), and “any other *device* capable of handling a call” (FF 8; emphasis added). Gardner further states that a “CPE can be, for example, a computer, a private branch exchange, or other *communication device*” (FF 9; emphasis added). In short, Gardner expressly states verbatim that the switching systems 206 and 208 may be composed of a “communication *device*.”

Appellants also argue that even if the Examiner’s broad interpretation of a “communication device” were to be accepted generally, Gardner still fails to teach or suggest the claimed features. This is because claim 1 recites two entities, a “decentralized switching device” and “communication devices,” and the same single device cannot be read as both entities (App. Br. 10). This argument is not persuasive. As we have already noted, Appellants’ Specification discloses that the claimed decentralized switching device is one portion, or a subset, of the claimed communication device (*see e.g.*, Spec. 16-19; fig. 3). Following Appellants’ own usage of these terms, we see no reason why it would be unreasonable to interpret one of Gardner’s switching systems (e.g., switching system 206) in combination with the associated connections,<sup>3</sup> as constituting a “communication device” and to interpret only the system’s switch itself as constituting the “decentralized switching device” – a portion of the “communication device.”

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<sup>3</sup> Such associated connections could include connections 216, 218, or 210, any undepicted connections existing within the black-box-depiction of switching system 206, or any combination of these connections.

## II.

Appellants assert that Gardner fails to disclose that the signaling takes place *from* a central device, as recited in independent claim 1, because signaling does not originate from Gardner's signal process. Rather, Gardner's signal processor 224 merely receives and processes call signaling (App. Br. 10; Reply Br. 2-3). The Examiner counters that the claim term "from" is broad enough to read on either of the following two situations: (1) the signaling *originates* at the central device; or alternatively (2) the signaling originates somewhere else upstream of the central device and is then received by and subsequently forwarded from the central device (Ans. 11). Appellants dispute the reasonableness of the second, broader interpretation, upon which the Examiner relies.

We need not decide whether the broader, second interpretation is reasonable. Gardner expressly defines the term "control message" to mean "a control or signaling message, a control or signaling instruction, or a control or signaling signal . . . that conveys information from one point to another" (FF 10). Gardner expressly states, "[t]he signaling processor 224 is a signaling platform that can receive, process, and *generate* call signaling" (FF 11). Gardner also discloses, "[t]he [asynchronous transfer mode (ATM)] matrix 226 is a controllable ATM matrix that establishes connections in response to control messages received from the signaling processor 224 (FF 12). Taken as a whole, Gardner seems to quite clearly disclose that the control signaling for instructing the switching systems 206 and 208 to set up or clear connections may originate at the signaling processor 224. As such, Appellants' argument is not persuasive.

### III.

Appellants argue that Gardner fails to disclose *signaling* first and second types of communication devices, much less signaling the communication devices to control the setting up and/or clearing of the communications link, as recited in independent claim 1 (App. Br. 11). This argument is not persuasive.

Gardner expressly disclose that signaling processor 224 sends a control signal across link 228 to ATM matrix 226 identifying selected connections (FF 13). Gardner's Figure 2 embodiment further depicts additional control links 230, 232 extending from signaling processor 224, but does not specifically indicate to where these control links are routed (FF 14). But Gardner also indicates that switching system 206 of the Figure 2 embodiment has at least four user communication connections (connections 210, 214, 216, and 218) and the switching system 208 has at least four user communication connections (connections 212, 214, 220, and 222) (FF 15). Because the switching systems each have more than two connections, each switching system must necessarily receive control information in order to operate as intended.

Further, in one example of the Figure 2 embodiment, Gardner discloses that additional control message links, beyond those depicted in Figure 2, are interconnected between signaling processor 224 and switching systems 206, 208, respectively (FF 16). The signaling processor 224 transmits new call signaling to the second switching system 208 over one of these undepicted links identifying the connection 212 over which the user

communication will be transported (FF 17). Gardner also states that “calls may be connected in the opposite direction as that described above [in relation to the embodiments depicted in Figures 2 and 3]. In addition, one, multiple, or all of the elements of the [described call connection systems] may be used to connect calls” (FF 18).

Accordingly, read as a whole, Gardner at least implicitly discloses that the signal processor 224 may be used, at least in situations where calls are routed through switching systems 206 and 208, to signal these switching systems to control the setting up of the communications link. *In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”).

For the foregoing reasons, Appellants have not persuaded us of error in the Examiner’s anticipation rejection of independent claim 1. Accordingly, we will sustain the Examiner’s rejection of that claim and dependent claims 2-8 which fall with claim 1. Furthermore, Appellants do not make any additional arguments with respect to independent claim 9. Rather, Appellants state that “[t]he rejection of independent claim 9 should be overturned for similar reasons to those discussed [in relation to independent claim 1]” (App. Br. 11). Accordingly, we will sustain the Examiner’s rejection of claim 9 and dependent claims 10-17 which fall with claim 9.

### CONCLUSIONS OF LAW

1. Appellants have not shown that the Examiner erred in interpreting Gardner's switching systems as constituting "communication devices;"
2. Gardner discloses that control signaling takes place *from* a central device; and
3. Gardner discloses *signaling* first and second types of communication devices.

Accordingly, Appellants have not shown that the Examiner erred in rejecting claims 1-17 under § 102.

### DECISION

We sustain the Examiner's rejections with respect to all pending claims on appeal. Therefore, the Examiner's rejection of claims 1-17 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

**AFFIRMED**

babc

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